C-8353 SUPREME COURT OF TEXAS CASES 005
EDGEWOOD INDEPENDENT SCHOOL DISTRICT, ET AL. V. KIRBY, 1988-89
WILLIAM, ET AL. (3RD DISTRICT)

DUNCANVILLE INDEPENDENT SCHOOL DISTRICT
EAGLE MOUNTAIN-SAGINAW INDEPENDENT SCHOOL DISTRICT
EANES INDEPENDENT SCHOOL DISTRICT
EUSTACE INDEPENDENT SCHOOL DISTRICT
GLASSCOCK INDEPENDENT SCHOOL DISTRICT
GRADY INDEPENDENT SCHOOL DISTRICT
GRAND PRAIRIE INDEPENDENT SCHOOL DISTRICT
GRAPEVINE-COLLEYVILLE INDEPENDENT SCHOOL DISTRICT
HARDIN JEFFERSON INDEPENDENT SCHOOL DISTRICT
HAWKINS INDEPENDENT SCHOOL DISTRICT
HIGHLAND PARK INDEPENDENT SCHOOL DISTRICT
HURST EULESS BEDFORD INDEPENDENT SCHOOL DISTRICT
IRAAN-SHEFFIELD INDEPENDENT SCHOOL DISTRICT
IRVING INDEPENDENT SCHOOL DISTRICT
KLONDIKE INDEPENDENT SCHOOL DISTRICT
LAGO VISTA INDEPENDENT SCHOOL DISTRICT
LAKE TRAVIS INDEPENDENT SCHOOL DISTRICT
LANCASTER INDEPENDENT SCHOOL DISTRICT
LONGVIEW INDEPENDENT SCHOOL DISTRICT
MANSFIELD INDEPENDENT SCHOOL DISTRICT
MCMULLEN INDEPENDENT SCHOOL DISTRICT
MIAMI INDEPENDENT SCHOOL DISTRICT
MIDWAY INDEPENDENT SCHOOL DISTRICT
MARANDO CITY INDEPENDENT SCHOOL DISTRICT
NORTHWEST INDEPENDENT SCHOOL DISTRICT
PINETREE INDEPENDENT SCHOOL DISTRICT
PLANO INDEPENDENT SCHOOL DISTRICT
PROSPER INDEPENDENT SCHOOL DISTRICT
QUITMAN INDEPENDENT SCHOOL DISTRICT
RAINS INDEPENDENT SCHOOL DISTRICT
RANKIN INDEPENDENT SCHOOL DISTRICT
RICHARDSON INDEPENDENT SCHOOL DISTRICT
RIVIERA INDEPENDENT SCHOOL DISTRICT
ROCKDALE INDEPENDENT SCHOOL DISTRICT
SHELDON INDEPENDENT SCHOOL DISTRICT
STANTON INDEPENDENT SCHOOL DISTRICT
SUNNYVALE INDEPENDENT SCHOOL DISTRICT
WILLIS INDEPENDENT SCHOOL DISTRICT
WINK-LOVING INDEPENDENT SCHOOL DISTRICT

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STATEMENT OF THE CASE

This is a suit for declaratory and injunctive relief seeking a holding that the current "system" of school finance is unconstitutional and requesting that an injunction be issued to prohibit its continuation. Petitioners prevailed in the trial court. On June 1, 1987, the 250th District Court of Travis County, Texas held the "system" unconstitutional, and enjoined its continuance after September 1, 1989. The case was duly appealed and on December 17, 1988, the trial court's judgment was reversed and rendered by the Third Court of Appeals in Austin, Texas. A Motion for Rehearing and Application for Writ of Error were timely filed, lodging this case before the Texas Supreme Court.

STATEMENT OF JURISDICTION

Respondents do not contest jurisdiction under Govt. Code §22.001(a)(1).

Respondents contest jurisdiction under Govt. Code §22.001 (a)(2) as the "holdings" of the Court of Appeals upon which Petitioners claim conflict were not holdings, but dicta.

Respondents contest jurisdiction under Govt. Code §22.001 (a)(3) because as this brief will show, Petitioners' claims for relief are not directed at the validity of state statutes.

Respondents contest jurisdiction under Govt. Code §22.001 (a)(4) since as this brief will show, the graveman of Petitioners' claims are directed at local, not state, revenues.

Respondents contest jurisdiction under Govt. Code §22.001 (a)(6) since, although this decision is admittedly important to the jurisprudence of the State, no error of law has been committed by the Court of Appeals.

REPLY AND CROSS POINTS

REPLY POINT ONE

THE COURT OF APPEALS PROPERLY BALANCED THE RESPECTIVE ROLES OF THE COURT AND LEGISLATURE UNDER THE TEXAS CONSTITUTION.

REPLY POINT NUMBER FIVE
AND CROSS POINT NUMBER ONE

PETITIONERS HAVE NOT PROPERLY RAISED THEIR ART. I §19 CLAIM

REPLY POINT NUMBER SIX

ATTORNEYS' FEES ARE NOT RECOVERABLE

STATEMENT REGARDING ADOPTION OF ARGUMENTS CONTAINED IN OTHER BRIEFS

This brief contains arguments germane to Reply Points Number One, Five, and Six, and Cross-Point Number One. For the sake of clarity and to avoid redundance, Respondents herein have divided the argument of their Reply Points amongst the parties. Accordingly, State Respondents adopt the argument contained in the Brief of Eanes I.S.D., et al. germane to Reply Point Number Two; the argument contained in Brief of Irving, I.S.D. germane to Reply Point Number Three; and the argument contained in the Brief of Andrews I.S.D., et al. germane to Reply Point Number Four.

REQUEST FOR ORAL ARGUMENT

Respondents request

Oral Argument upon Submission of this Cause

STATEMENT OF FACTS

Texas relies on a combination of state, local, and federal funds to support its public education system. State support essentially comes in two forms. The Available School Fund is distributed on a flat per student basis to all public school districts in the State. General revenue funds are distributed through a system of statutory formulas, with the overwhelming majority of such funds targeted to districts with low taxable property wealth per student. Local support essentially comes in the form of ad valorem property taxes, which are authorized for the erection and equipping of facilities and for the further maintenance of the schools.

At various times in this century, Texas has made efforts to address through state funding disparities between school districts in the State. See, The Basics of Texas Public School Finance, pp. 6-8. The most significant improvement in Texas occurred in 1949, when the Legislature adopted a series of laws collectively known as the Gilmer-Aiken Acts, which established the Minimum Foundation Program. This system was modified periodically in subsequent decades, and the Texas system today is a refinement of the foundation program established in 1949.

On March 21, 1973, the United States Supreme Court somewhat reluctantly determined that the Texas public school system did not violate the Equal Protection Clause of the Fourteenth Amendment.[1] However, this decision was not an endorsement of the existing Texas system. The court noted numerous shortcomings of the Texas system that deserved attention.

The Plaintiffs and Plaintiff-Intervenors in the present case would have this Court believe that circumstances have changed very little in Texas since 1973. Such a superficial gloss does a disservice to all of the legislative improvements in the Texas public school finance system in the past several years. The Plaintiff-Intervenors' lead expert witness, Dr. Richard Hooker, recognized the tremendous increase in state aid in the years following the Supreme Court's decision in San Antonio Independent School District v. Rodriguez, 411 U.S. 91, 93 S.Ct. 1278 (1973). Transcript, Vol. II, pp. 165-166. In 1975, the Texas Legislature increased state aid by $760,000,000. The state aid increase in 1977 was an additional $998,000,000. The state aid increase in 1979 was another $1,200,000,000. In 1981, another $1,400,000,000 in state aid was added to the

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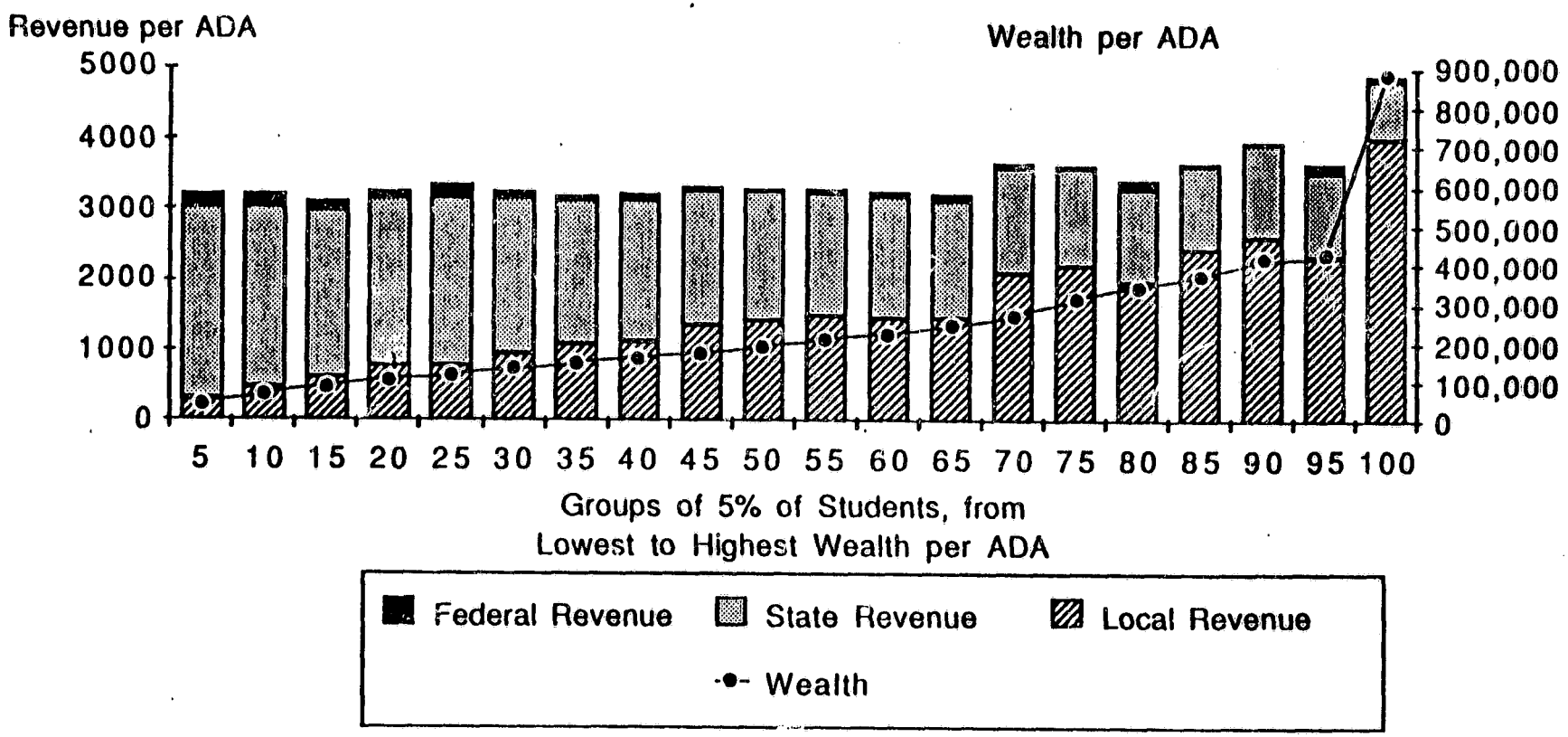
[1]San Antonio I.S.D. v. Rodriguez, 93 S.Ct. 1278 (1973).

system. In 1984, with House Bill 72, the Texas Legislature added another $2,400,000,000, or $800,000,000 in state aid each year over a three year period. This bill has been characterized by Dr. Hooker as "the most comprehensive reform bill passed in the United States by any state." [Statement of Facts, Vol. I, p. 52]. Not only has the Texas Legislature added billions of new state dollars to public education in recent years, but it also has redistributed hundreds of millions of dollars from above average wealth districts to below average wealth districts. Dr. Hooker noted that over 200 school districts actually lost state aid as part of House Bill 72.

The general effect of House Bill 72 can be seen by examining Chart A, which is displayed on the following page (together with its supporting data displayed on the page following). It is displayed by grouping students in increments of 5% of the total student population and by computing averages for those groups. Also displayed on Chart A is a line graph that shows the wealth per student in average daily attendance within the 5% increments. The Chart clearly demonstrates that as local property wealth rises, the State provides proportionately less revenue for support of education, and the local districts provide proportionately more revenue from local property taxes.

CHART A

Comparison of Wealth per ADA and
Revenue per ADA by Source



TEXAS EDUCATION AGENCY

DISTRICTS GROUPED INTO APPROXIMATELY 20 WEALTH CATEGORIES WITH APPROXIMATELY EQUAL REFINED ADA IN EACH GROUP WEALTH ORDER LOW TO HI WITH .05 * RADA AS CUTOFF

NBR OF DISTS	RANGE OF WEALTH	REFINED ADA	LOCAL REVENUE PER ADA	STATE REVENUE PER ADA	FEDL REVENUE PER ADA	TOTAL REVENUE PER ADA	AVG PCT MAST
21	UNDER $51,958	146,269	311	2,741	195	3,247	40.38
68	$51,958 - $81,132	139,885	489	2,562	207	3,259	49.67
73	$81,133 - $98,082	145,766	815	2,403	133	3,151	55.63
106	$98,083 - $116,701	145,020	803	2,354	119	3,275	57.60
34	$116,702 - $121,175	145,822	807	2,367	189	3,363	52.19
97	$121,176 - $142,788	143,841	973	2,207	108	3,287	56.89
54	$142,789 - $156,876	137,389	1,096	2,038	85	3,219	62.94
36	$156,877 - $166,834	145,346	1,144	1,991	102	3,237	64.89
52	$166,835 - $181,310	150,153	1,370	1,904	78	3,352	64.06
58	$181,311 - $200,759	146,046	1,451	1,825	50	3,325	64.70
45	$200,760 - $216,608	146,118	1,493	1,746	55	3,293	67.41
50	$216,609 - $235,160	143,416	1,457	1,755	62	3,274	66.57
25	$235,161 - $250,107	158,517	1,486	1,652	87	3,225	56.52
49	$250,108 - $289,578	145,176	2,102	1,512	67	3,682	67.23
50	$289,578 - $332,100	154,905	2,205	1,408	51	3,664	68.66
19	$332,101 - $348,180	224,020	1,991	1,329	138	3,458	53.96
29	$348,181 - $402,524	145,531	2,459	1,193	32	3,684	78.30
16	$402,525 - $422,525	102,593	2,628	1,324	54	4,005	62.36
32	$422,526 - $478,340	145,606	2,348	1,200	135	3,682	50.20
149	OVER $478,340	108,225	4,027	801	85	4,913	68.05
		2,919,445					

N= 20

Chart A also indicates that the revenue disparities that continue to exist are not extreme over the entire system.

The specific effect of House Bill 72 can be seen by examining the financial circumstances of Edgewood I.S.D. and comparing it with other districts. In the 1985-86 school year, the second year after House Bill 72, Edgewood I.S.D.'s total current operating expense was $3,600.58 per student, which was $250 per student above the statewide average of $3,345.66 per student. Plaintiff-Intervenors' Exhibit #205, p. A-50, Col. 10. Also, Edgewood I.S.D.'s true tax rate for the 1985-86 school year was 56.3¢ per $100 valuation, which was about 13¢ below the state average true tax rate of 68.1¢ per $100 valuation. PIX #205, p. A-52, Col. 33. In addition, Edgewood I.S.D. had an operating fund balance of $659.01 per student, compared with a statewide average of $540.49. PIX #205, A-50, Col. 13.

For purposes of comparison, Dr. Hooker identified Dallas I.S.D. and Houston I.S.D. as being comparable to Edgewood I.S.D. in terms of high density and high cost students. Statement of Facts, Vol. II, pp. 196-202. Dr. Hooker also identified Dallas I.S.D. and Houston I.S.D. as being relatively wealthy districts, with Dallas I.S.D. actually at the 95th percentile in terms of wealth per student. Statement of Facts, pp. 197-198. For the 1985-86 school year, Dallas I.S.D.'s total current operating expense

was $3,545.80 per student, and its true tax rate was 53.9¢ per $100 valuation. PIX #205, p. A-26, Col. 10, and p. A-28, Col. 33. Houston I.S.D.'s total current operating expense was $3,589.99 per student, and its true tax rate was 59.7¢ per $100 valuation.

The State certainly does not deny that disparities in revenues and expenditures exist between Texas public school districts, particularly at the extremes of wealth and poverty. However, the state foundation program largely compensates for the disparities, so that most districts and students are within a reasonably equalized system.

One particular aspect of the trial court's decision deserves emphasis. The Plaintiffs argued that the current system is discriminatory against Mexican-Americans. In its Final Judgment entered on June 1, 1987, the trial court expressly found "that the Texas School Finance System does not violate Art. I, §3, or Art. I, §3a by discriminating against Mexican-Americans." The Plaintiffs did not challenge this determination in the appeal below, and this conclusion by the trial court is final.

The State's briefs below contain more extensive discussion of the facts relevant to this case. Respondents rely on those briefs in addition to the arguments set forth herein pursuant to Rule 136(f), Texas Rules of Appellate

Procedure. Copies of the briefs in the Court of Appeals are resubmitted in the Appendix to this brief.

ARGUMENT AND AUTHORITIES

REPLY POINT ONE

THE COURT OF APPEALS PROPERLY BALANCED THE RESPECTIVE ROLES OF THE COURT AND LEGISLATURE UNDER THE TEXAS CONSTITUTION.

Subpoint 1.
EQUAL PROTECTION ANALYSIS MUST ACKNOWLEDGE THE CONSTITUTIONAL LIMITATIONS PLACED ON "THE SYSTEM" BY THE DEVELOPMENT OF ART. VII §3

I.

The Method of Review - Each Component of the School Finance "System" Must be Reviewed Separately.

Significant difficulties arise in the analysis of the issues raised by Petitioners' Application for Writ of Error because of their steadfast refusal to define the issues within the context of traditional equal protection analysis.[1] Petitioners argue that the "system" of school finance is unconstitutional.[2] To decide this issue, traditional equal protection analysis requires, at the

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[1]This problem is also inherent in the Trial Court's Judgment and Judge Gammage's Dissent.

[2]The original and amended pleadings of both the Plaintiffs and the Plaintiff-Intervenors define the "system of Public School Finance" as referring only to Chapter 16 of the Texas Education Code, which includes only the formulas for distributing state aid. Not until midway through the trial did counsel for Plaintiffs and Plaintiff-Intervenors clearly enunciate the broader definition of "system" as including local boundary lines that is contained in the trial court's Final Judgment. (Statement of Facts, Vol. XXVII, pp. 5043-5044).

outset, an identification of the specific legislative classification upon which the constitutional challenge is predicated.

The Texas Supreme Court has provided recent guidance in this respect in its review of the State's guest statute in Whitworth v. Bynum 699 S.W.2d 194, 197 (Tex. 1985).

> A court begins by presuming a statute's constitutionality, whether the basis of the constitutional attack is grounded in due process or equal protection [citation omitted]. Even when the purpose of a statute is legitimate, equal protection analysis still requires a determination that the classifications drawn by the statute are rationally related to the statute's purpose. Sullivan v. University Interscholastic League, 616 S.W.2d 170, 172 (Tex. 1981). Under the rational basis test of Sullivan, similarly situated individuals must be treated equally under the statutory classification unless there is a rational basis for not doing so. (Emphasis added)

The Sullivan case speaks in terms of the rule which creates the system of classification. Sullivan, id. at 172.

In the present case, the Plaintiffs and Plaintiff-Intervenors have not challenged the constitutional or statutory provisions governing creation of school districts and alteration of district boundaries (Tex. Educ. Code, Ch. 19), nor have they challenged the constitutional or statutory provisions by which school districts are authorized to levy ad valorem property taxes (Tex. Educ.

Code, Ch. 20). They focus on the "system" as a whole with no attempt to identify or discuss which among the many classification mechanisms within the "system" create the problem for which they seek relief.

Petitioners view the system as an inseparable whole that forms a Gordian knot. Casting themselves in the role of Alexander the Great, because they are frustrated with the complexity of the system and the difficulty of untangling the various strands of legal theory, they propose simply to cut the knot. The knot is separable into specific strands that arise from a series of constitutional amendments, court cases, and legislative reaction to both. By ignoring the interplay among the various structural components which create the school finance system in the aggregate, Petitioners have misconstrued the process of judicial review applicable to this case.

The school finance "system" is comprised of a number of constitutional limitations, legislative classifications, and local determinations that interact with one another. Respondents will demonstrate that not all aspects of the "system" are reviewable by this Court, and that some aspects of the "system," although theoretically reviewable, are not properly before the Court within the context of <u>this</u> case. If these premises are correct, it will be necessary to separately review each of the major components of the

"system." This approach is required because the Legislature is itself significantly constrained by the Constitution. No meaningful review of the Legislature's putative obligations under the Constitution may take place without simultaneously considering the limitations placed on the Legislature by the Constitution. A detailed review of these distinct components has been totally neglected in the pending Application for Writ of Error. Engaging in this more precise review is consistent with the obligation to construe statutes as constitutional if possible, and, if not possible, to strike only those portions of a classification system necessary to rectify the specific problem.[3] In order to make the required analysis, it is first necessary to describe the development of school finance in this state since the Constitution of 1876. An understanding of the history and the judicial precedent affecting that history is necessary to understand the limitations the Constitution places upon the Legislature's power to act. After briefly reviewing this history, Respondents will deal with the specific issues raised by Petitioners.

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[3]See Brief of Irving I.S.D. regarding more specific treatment of standards for constitutional review.

There are three distinct and functionally separate elements which currently comprise the school finance "system" in Texas. Each component emerged separately over time in response to specific conditions. Each component is governed by separate constitutional and statutory provisions, some of which are not at issue in this lawsuit. These components are: 1) the original constitutionally required system; 2) the Foundation School Program which together with the original constitutional component collectively comprise the state funded contribution to school finance; and 3) the local district boundary and taxing structure. Each of these components can in turn be divided into two elements: A) the method of revenue generation from the taxpayer; and B) the method of revenue distribution to the students.

II.

Development of School Finance, the History of Constitutional Amendments to Art. VII §3 and Judicial Opinions Affecting Same

The major components of the school finance system can be most easily understood when viewed in light of their historical development. The system has been called "patched-up and overly cobbled." Shepherd v. San Jacinto Junior College District, 363 S.W.2d 742, 744 (Tex. 1963); See also, majority opinion below p. 13. A review of the development of the school finance system will clearly

demonstrate that it was the voters of this State, through successive constitutional amendments to Art. VII §3, who have "patched" and "cobbled" the system. It is the people's right to make these determinations. Tex. Const. Art. I §2. The manner of exercising this control is through Constitutional Amendment. Art. XVII §1. Once the people have spoken through amendment to the Constitution, the courts must defer to their will. Gillespie v. Lightfoot, 103 Tex. 359, 127 S.W. 799 (Tex. 1910) The discussion in this brief will begin with the Constitution of 1876.[4]

A. Original System - The Available School Fund

1. Revenue Generation

The original school finance system generated revenue at the state level. It was and still is composed of the proceeds of the Perpetual School Fund, Art. VII §2, combined with the dedicated taxes that have from time to time been set forth in Art. VII §3. These methods of revenue generation are constitutionally required and are uniformly raised on a statewide basis. They have frequently changed over time. Article VII, §3, as it was originally drafted provided:

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[4]The Brief of Irving I.S.D. covers the origins of that Constitution, and earlier constitutional history.

> "There shall be set apart annually not more than one-fourth of the general tax of the State, and a poll tax of One Dollar on all male inhabitants in this State between the ages of twenty-one and sixty years, for the benefit of the public free schools."

The 1883 amendment to Art. VII §3 removed the general revenue dedication, and replaced it with "one-fourth of the revenue derived from the State occupation taxes." H.J.R. No. 7, Acts 1883, 18th Legis. R.S. p. 413. This provision remains in effect today. For example, when the Texas Legislature created an occupation tax of $110.00 per year for attorneys in 1987 through the passage of Tax Code §191.141 et seq., one-quarter of the revenue was for school purposes by the preexisting Constitutional dedication in Art. VII §3.[5]

In 1883 a new statewide ad valorem tax of 20 cents per $100.00 valuation was created and dedicated to per capita distribution.[6] In 1918, Art. VII §3 was changed to provide for a statewide rate of 35 cents per $100.00 valuation ad

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[5]See, §191.122 Tax Code.

[6]Under the 1869 Constitution there was a mandatory statewide $1.00 per $100.00 ad valorem tax that was abolished in the Constitution of 1876. See Brief of Irving I.S.D.

valorem tax for education. H.J.R. 27, Acts 1917, 35th Legis., R.S., p. 503.

The most recent amendment to Art. VII §3 of the Texas Constitution was proposed by the Texas Legislature in 1967. S.J.R. No. 32, Acts 1967, 60th Legis., R.S., p. 2972. This constitutional amendment was adopted in 1968 and required the gradual elimination of the State ad valorem property tax over a period of time in the following terms:

> "2. The State ad valorem tax authorized by Article VII, Section 3, of this Constitution shall be imposed at the following rates on each One Hundred Dollars ($100.00) valuation for the years 1968 through 1974; on January 1, 1968, Thirty-five Cents (35¢); on January 1, 1968, Thirty Cents (30¢): on January 1, 1970, Twenty-five Cents (25¢); on January 1, 1971, Twenty Cents (20¢); on January 1, 1972, Fifteen Cents (15¢); on January 1, 1973, Ten Cents (10¢); on January 1, 1974, Five Cents (5¢); and thereafter no such tax for school purposes shall be levied and collected. An amount sufficient to provide free text books for the use of children attending the public free schools of this State shall be set aside from any revenues deposited in the Available School Fund, provided, however, that should such funds be insufficient, the deficit may be met by appropriation from the general funds of the State.

By constitutional amendment, the people of the State of Texas significantly reduced the amount of constitutionally

dedicated tax revenues available to the State of Texas for the provision of public education. If, for example, the thirty-five cent (35¢) tax rate per one hundred dollar tax valuation were applied to the 1985-86 statewide assessed property value of $702 billion dollars, the State's Available School Fund would have received approximately 2.457 Billion Dollars in revenue for public education in 1985-1986, or approximately $620.00 per student. One rationale for eliminating the state property tax was to leave this particular source of revenue available for local units of government.

It is worthy of note that during this same period of time the Legislature has more than offset this revenue loss by steadily increasing the general revenue commitment to educational resources. In 1975, the year immediately following the cessation of the ad valorem tax, the State spent approximately 1.5 billion general revenue dollars for education. Today, the total state expenditure approaches 5 billion dollars or approximately $1,600.00 per student. At the same time, school districts, among other taxing entities, have increased their local taxation in the wake of the State's abandonment of that revenue source.

The result of these shifts can be illustrated by the circumstances of Edgewood I.S.D., which at the time of the Rodriguez case was receiving $248.00 per student in state

and local aid. Rodriguez, 93 S.Ct. at 1285. At the time of trial Edgewood I.S.D. was receiving in excess of $2,900.00 per student in state and local revenues, with an $893.00 per student increase coming directly from H.B. 72. R. IX, p. 1574.

In 1981, statewide ad valorem taxes were expressly prohibited by the adoption of Art. VIII §1e. H.J.R. No. 1, Acts 1982, 67th Legis. 2nd C.S. p. 52. It is difficult to conceive of what may be unconstitutional about a system of revenue generation that is specifically required by the Constitution itself.

2. Revenue Distribution Under the Original System

All the above-described dedicated funds are distributed through the Available School Fund. (Art. VII, §5) This system of revenue generation and its distribution are constitutionally required. The Permanent School Fund in 1985-86 totalled approximately seven billion dollars. The available fund yielded approximately $280.00 per child for the 1985-86 school year. Petitioners do not now, nor did they at trial, seriously challenge this component of the school finance system. Even assuming this Court could review such a constitutional provision, it seems unlikely that an equal per capita distribution of state funds would have any equal protection implications since all are treated

alike. In sum, the original system does not create the problem for which relief is sought.

B.

The "Other" Statewide System - General Revenue Funding - Distribution via Chapter 16, Tex. Educ. Code

The second major funding component of the Texas school finance system is the distribution of state general revenue funds to school districts pursuant to Tex. Educ. Code, Chapter 16.[7]

1. Revenue Generation - The General Revenue Fund

Revenue generation for general revenue expenditures come from a variety of taxes that have been imposed from time to time by the Legislature. Examples include sales taxes, corporate franchise taxes, and oil and gas severance taxes. These taxes are collected on a statewide basis, and there is no issue as to their propriety in this case.

2. Revenue Distribution - Tex. Educ. Code, Chapter 16.

The general revenue funds are distributed through appropriation acts. In the case of school finance, Art. VII §3 of the Constitution authorizes the legislature to appropriate general revenue funds for the benefit of the

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[7]A nontechnical outline of the major provisions of Chapter 16 is attached to the Appendix of this brief.

public schools The appropriated funds are distributed through a system of formulas set forth in general law in Tex. Educ. Code, Chapter 16.

Chapter 16 of the Texas Education Code standing alone unabashedly classifies districts on the basis of wealth in that it vastly skews the distribution of state aid to the school districts who can least afford to raise revenue locally. The poorer school districts are the overwhelming beneficiaries of the current formulas to distribute funds appropriate for public education. The Plaintiffs and Plaintiff-Intervenors did not advocate at trial or in the appeal below, nor do they suggest in their pending Application for Writ of Error, any particular revision of the statutory formulas by which general revenue funds are distributed to Texas public school districts.

The chart in the Statement of Facts of this Brief clearly demonstrates the beneficial results of Chapter 16. This state aid distribution scheme is of the same precise type expressly approved by this Court in Mumme v. Marrs, 40 S.W.2d 31 (Tex. 1931).[8] It is important to note that this type of aid was not contemplated in the Constitution of

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[8]In Mumme, the state appropriation at issue in question was five million dollars; in 1985-86 it was five and a half billion dollars.

1876. As found by this Court, in Mumme, Id. at 34, it was not until the constitutional amendment of 1918 that general revenue appropriations for education outside the available school distribution system were even authorized. Prior to that time dedicated taxes distributed on a per capita basis was the only permissible system of distribution.

The trial court's Order did not find that Chapter 16 violated the Constitution, in and of itself. The trial court was able to reach the conclusion that the system of school finance was unconstitutional, not because there was a lack of a rational basis or compelling state interest for the statutory classifications contained in Chapter 16 of the Education Code, but only because it was "implemented in conjunction with local school district boundaries that contain unequal taxable property wealth for the financing of public education" (Final Judgment, pp. 4, 5, 6, 7). Indeed, on page 5 of the Final Judgment, the Court holds

> "During the course of the trial, the Court heard substantial evidence of the State's taking into consideration legitimate cost differences in its funding formula. The Court is persuaded that legitimate cost differences should be considered in any funding formula and would encourage the State to continue to do so."

This sentiment is echoed in Finding II (E)(g), (Findings and Conclusions, p. 59), where the trial court finds H.B. 72 a

"generous and thoughtful" effort to rectify the disparities in district property wealth. Both the Dissent below, and Petitioners before this Court follow this pattern.

The Legislature may make classifications without including all cases which it might possibly reach. The Legislature is free to recognize degrees of need and confine its restrictions to those perceived needs. Miller v. Wilson, 236 U.S. 373, 35 S.Ct. 342, (1915).

> "Where rationality is the test, a state 'does not violate the Equal Protection Clause merely because the classifications created by its laws are imperfect...'"

Massachusetts Board of Retirement v. Murgia, 427 U.S. 307, 316, 96 S.Ct. 2562 (1976), quoting Dandridge v. Williams, 397 U.S. 471, 485, 90 S.Ct. 1153 (1970).

A rational basis for statutory classification exists if any state of facts may be reasonably conceived to justify the scheme. Carl v. South San Antonio Independent School District, 561 S.W.2d 560, 563 (Tex. Civ. App. -- Waco 1978, writ ref'd n.r.e.) (quoting McGowan v. Maryland, 366 U.S. 420, 81 S.Ct. 1101 (1961)). See also, City of Humble v. Metropolitan Transit Authority, 636 S.W.2d 484 (Tex. App. -- Austin 1982, no writ). This standard of review requires a substantial deference to the legislative process, which is

proper given the legislative department's independent responsibility to interpret the Texas Constitution.

Assuming arguendo that this Court were to disagree with the Court of Appeals' decision regarding fundamental right and apply the more exacting "strict scrutiny" test to analyze school finance in Texas,[9] the distribution system of Chapter 16 would be able to meet this more exacting "strict scrutiny" standard of review. Petitioners' whole case is that the State is compelled to fund districts differentially according to their wealth. Chapter 16 is designed to accomplish that goal. All the evidence in the case demonstrates that it has an enormously ameliorating impact, significantly rectifying the preexisting variant district wealth. That is, the Legislature had a compelling interest in rectifying the disparities created by variant district wealth. That they have done so imperfectly does not create a constitutional infirmity. Petitioners have not demonstrated an equal protection violation as to general revenue funded portion of the state finance "system."

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[9]Of course, Respondents agree with the Court of Appeals' decision in this regard. For further argument on this issue see Brief of Eanes I.S.D.

C.

Formation of School Districts and Evolution of Their Taxing Power

The Legislature was free under the Constitution of 1876 to provide for the creation of school districts. State, ex rel Grimes County Taxpayers Association v. Texas Municipal Power Agency, 565 S.W.2d 258, 271 (Tex. App. -- Houston 1st 1978, writ den'd). However, because of Art. III §56 of the Constitution, the Legislature was not originally authorized to create districts by special law. County School Trustees of Orange County v. District Trustees of Prairie View Common School District No. 8, 153 S.W.2d 434, 438 (Tex. 1941).

The Legislature could not authorize local school taxation other than that authorized by Art. XI §10, which limited taxing authorities only to cities and towns. When the City of Fort Worth in 1880 sought to levy a school tax without a preexisting charter authorization, the Texas Supreme Court held in City of Fort Worth v. Davis, 57 Tex. 225 (1882), that it was without power to do so. This decision lead directly to an amendment to Article VII §3 in 1883, which expressly authorized the Legislature to provide for creation of districts and local taxation, subject to voter approval.

1. Formation of School Districts

The 1883 amendment permitted the Legislature to provide for the formation of school districts by either special or

general law. This provision was construed by the Texas Supreme Court in State v. Brownson, 94 Tex. 436, 61 S.W. 114 (Tex. 1901) which held:

> "...the purpose of the provision quoted was to give the legislature a free hand in establishing independent school districts...the provision was intended to empower the legislature to establish separate school districts, and, in order to provide for them, they must first be created. We see no reason why they might not be created by direct act of the legislature...the fact that the legislature was empowered to act by special law shows that it was contemplated that it might be desirable to pass an act creating one district only. The separate school district in question was provided for when the legislature fixed the limits of the territory."

Id.

In Parks v. West, 102 Tex. 11, 111 S.W. 726 (Tex. 1909), the Supreme Court, while striking down the existence of certain school districts that crossed county lines acknowledged the broad grant of authority set forth in Art. VII §3 and discussed in State v. Brownson:

> "...the amendment of 1883...granted the power to authorize local taxation in the school districts to be formed as provided for...the power was given to make further provision that the Constitution, itself, made by forming districts and investing them with the power of taxation to the extent prescribed...it is to authorize 'additional tax...for the further maintenance of public free schools.'"

In response to the Parks v. West decision, Art. VII §3(a) was passed and became effective in 1909. In addition to the provision of Art. VII, §3(a), Art. VII §3 of the Texas Constitution was amended to delete the language "within all or any of the counties of this state" upon which the decision in Parks v. West was premised. H.J.R. 6 Acts Thirty-First Legislature 1909, p. 250. The passage of Art. VII §3a constitutionally validated the school district configurations as they existed in 1909.

In Gillespie v. Lightfoot, 103 Tex. 359, 127 S.W. 799, 801, (Tex. 1910), the Supreme Court noted the effect of these constitutional amendments, and held:

> "The Amendment of the Constitution is an exertion of the sovereign power of the people of the State to give their expressed will the force of law supreme over every person and every thing in the State..."

In so noting, the Court determined that the effect of the amendment was to undo the Parks v. West decision, and to expand the Legislature's prerogative in the creation of school districts.

In January, 1927, another amendment deleted the language in Art. VII §3 which allowed the Legislature to create districts by special law, Fritter v. West, 65 S.W.2d 414, 416 (Tex. App. -- San Antonio 1933, writ ref'd),

thereby reinstating the preexisting prohibition in Art. III §56. S.J.R. 9, Acts 1925, 39th Legis., R.S. p. 682.

In 1935, when the Legislature passed a statute that attempted to retain legislative control by making district boundary decisions subject to legislative approval, the Texas Supreme Court, citing the 1927 amendment, struck down the provision as unconstitutional. County School Trustees of Orange County v. District Trustees of Prairie View Common School District No. 8, 153 S.W.2d 434, 438-439 (Tex. 1941).

Various statutes have existed for the creation, abolition or modification of school districts. Since the codification of education law, those general statutory provisions have been collected in Tex. Educ. Code, Chapter 19, [10] which does not classify districts according to any impermissible criteria. Instead, it provides a uniform framework which governs the methodology by which the citizens of any school district in the state may alter its boundaries. Again, the legislative scheme treats all districts similarly, and does not classify districts in any impermissible way.

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[10]More specific treatment of the laws governing school district creation or modification will appear in the Brief of Andrews I.S.D.

As recently at 1987, this Court in the case of Central Education Agency v. Upshur County Commissioners Court, 731 S.W.2d 559 (Tex. 1987) reviewed the process by which districts modify their boundaries, and reminded state officials of the limitations on their authority to review a local decision. The majority opinion found that a proper delegation of the legislative obligation "to establish and make suitable provision for the support and maintenance of an efficient system of public free schools" had been made to local officials by the promulgation of Tex. Educ. Code, §19.261. It held that the Commissioner of Education's authority to review the local decision was limited by statute to "substantial evidence review." This guaranteed great deference to the local decision makers. It is significant to note that while the dissent in that case differed over the Commissioner's review power, it strictly constrained the role of the district court.

> In such a situation [direct appeal to the courts] the doctrine of separation of powers mandates that the district court only review the county officials' determination for fraud, bad faith, or abuse of discretion, essentially a substantial evidence review.

This type of review was not the basis for the trial court's determination of the school district boundaries. The Commissioner's administrative jurisdiction was never invoked, and the vast majority of districts of which

Petitioners complain in this Court were never before the trial court.[11] No evidence regarding the local decision makers' reasons for their actions was presented. The only evidence addressed at all during the trial was a book of maps showing the location of school districts in the State, and raw data showing the taxable value of property in each district, expressed in terms of taxable value per average daily attendances. The Petitioners have not challenged, either below or before this Court, any constitutional provision or statute governing the creation of school districts, nor have they challenged any constitutional provision or statute by which any school district was authorized to levy ad valorem property taxes.

In sum, although Petitioners apparently attack current district configurations in this appeal,[12] it is clear that

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[11]For a further, more complete discussion of the provisions for altering school district configurations, see Brief of Andrews I.S.D., et al. in opposition to Writ of Error.

[12]Although Petitioners attack the district configurations, they expressly disavowed this position at trial. R. XXXVIII, pp. 5017-5126. However, the trial court's findings and conclusions demonstrate that the real problem was the great disparity in district wealth. The trial court essentially found that there was no rational basis for the current district divisions, due to this variation in wealth. The trial court attempted to avoid holding the current configuration of districts
(Footnote Continued)

they have not availed themselves of the proper procedural remedy outlined in Upshur County, supra.

2. Evolution of the Local Taxing Power

Simultaneous with the development of provisions governing the formation of school districts in the State, the history of constitutional development in Texas evidences the progressive shifting of greater and greater taxing prerogatives to the local district.

In the Constitution of 1876, the only authorization for local taxation was contained in Art. XI §10. The taxing power was limited only to cities and towns separately constituted as school districts, and then only upon approval of two-thirds of the voters.

In 1883, in light of the restrictions outlined in this Court's opinion in City of Fort Worth v. Davis, supra, Art. VII §3 of the Constitution was amended to permit legislative authorization of local ad valorem taxation for "further maintenance of public free schools and the erection of buildings thereon...". The tax levy had to be authorized by

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(Footnote Continued)
unconstitutional, since the Plaintiffs refused to assert such a claim, and because that issue could not be adjudicated by the district court absent the proper parties and necessary administrative proceeedings. The decision by Petitioners to now take a position they renounced at trial is an admission that invalidity of current district divisions is essential for them to prevail.

two-thirds of the qualified voters and was limited to 20¢ per $100.00 valuation.

In 1908 a constitutional amendment to Art. VII §3 was passed raising the 20¢/$100.00 ceiling for school districts to 50¢/$100.00. The same amendment reduced the local voter authorization from two-thirds of the voters to a simple majority. The clear intent was to make the raising of local revenues easier in terms of voting percentages, and more lucrative in terms of local dollars raised.

In 1915 an attempt to raise the local tax cap from 50¢/$100.00 to $1.00/$100.00 was put before the voters, but the proposition failed. In 1920, Art. VII §3 was amended to delete the constitutional cap on local district taxing authority and to delegate the power to limit local taxation to the Legislature. However, the Legislature's power to control the local tax was not unlimited, as the Constitution still required local voter approval.

In 1931, this Court reminded the Legislature of the limits of its power over local tax revenues by holding that the Legislature could not invade the local district's revenues by requiring a school district to educate non-resident children without payment. Love v. City of Dallas, 120 Tex. 351, 40 S.W.2d 20 (Tex. 1931). This constraint significantly impairs the Legislature's ability to deal with variant district wealth today. Since the

Legislature may not take district money away, it may only seek to rectify local disparities by its own spending power.

Finally, in 1968, the voters adopted an amendment to Art. VII §3 which eliminated the statewide ad valorem property tax of 35¢/$100.00, freeing the tax base of state demand so it could be more readily accessed by local authorities. The obvious pattern over time demonstrates a clear intent to increase reliance on the local ad valorem property tax as a method of funding public education in the state.

In sum, as found by the Court of Appeals, the development of Art. VII §3 clearly demonstrates that the intent of the provision means exactly what it says. The Legislature may provide for the creation of school districts by general law, which then have the twin powers: to 1) to levy taxes for school maintenance and facilities, and 2) to change their geographic configuration to meet the changing desires or needs of the local citizenry. Since the taxing power must be equally applied to all property within a district under Art. VIII §1, these powers are functionally inseparable. In short, the unchallenged historical record indicates that the Constitution contemplates precisely the system that currently exists. Further, the Plaintiffs and Plaintiff-Intervenors have not challenged any constitutional

or statutory provision by which local school districts are created or authorized to levy ad valorem property taxes.

Subpoint 2

PRINCIPALS OF JUDICIAL REVIEW REQUIRE DEFERENCE TO LEGISLATIVE OR LOCAL DETERMINATIONS OF LOCAL SCHOOL BOUNDARY DECISIONS

I.

The Standard of Review under Texas Law Demands Adherence to the Intent of the Framers

Having examined the historical pattern in which the current system of educational finance grew in Texas, it is clear that, "the system" is not a monolith. This fact must be considered in discussion of the merits of Petitioners' contentions.

Petitioners argue that this case is being brought under the Texas Constitution, and that this Court is not bound by the United States Supreme Court in the Rodriguez decision. With this contention, Respondents agree. Yet, having made that pronouncement, Petitioners inexplicably return to the Rodriguez analysis as the basis of their argument. To buttress their position, Petitioners rely almost exclusively on federal and out of state authority. While this method of analysis is a legitimate approach in an area where the Texas courts have never ruled, it is substantially diminished by Petitioners' glaring neglect of the historical record, and

Texas judicial precedent. As outlined in the historical section of this Brief, there are many, many Texas cases that must be considered in arriving at a consistent and principaled decision regarding the mandates of the Texas Constitution.

> These cases have never been overruled, but likewise they have not been cited in recent years. Because of this later circumstance the [Petitioners are] of the opinion that these ancient cases, like old soldiers, had just faded away. Perhaps a reexamination of the holdings of the cases mentioned is called for, but [the cases] are decisions of this Court and unless there is some good reason for overruling them they should not be disregarded.

Reed v. Buck, 370 S.W.2d 867, 870-871 (Tex. 1963).

Petitioners herein, by their almost total reliance upon federal and non-Texas authority, cannot be viewed as seriously advocating that the existing case law requires the result they seek. Nor do Petitioners make anything but a halfhearted effort to review the historical record in an effort to provide an empirical basis for the position they advocate. Petitioners are advocating that this Court should, based upon the undisputed importance education plays in our modern society, declare a bold new strategy for the provision of education in this State. Then, having declared this new strategy, Petitioners would have this Court order the legislative branch to accompany it on this adventure

without regard to the traditional method of providing for this type of fundamental change, to wit: Constitutional amendment.

This method of review has been referred to as noninterpretive review by commentators. Maltz, The Dark Side of State Court Activism, 63 Tex. L. Rev. 995 (1985). Both the dissent at the Court of Appeals level (at pp. 11-12), and Petitioner Edgewood I.S.D. (Brief p.p. 53-54) disavow that noniterpretive review is a proper standard for constitutional review in Texas.[13] Constitutional provisions may not be bent to meet beneficent purposes no matter how noble the intent or design. Ex parte Smythe, 120 S.W. 200 (Tex. Crim. App. 1909). Nor may the courts amend the Constitution by judicial decision. Rawlins v. Drake, 291 S.W.2d 349 (Tex. App. -- Dallas 1956, no writ). Therefore, all parties agree the proper standard is to determine the original intent of the framers. Cramer v. Shephard, 167 S.W.2d 147, 152 (Tex. 1943).[14]

The remainder of this brief will endeavor to detail the difficulties inherent in the approach Petitioners advance by

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[13]Petitioner Alvarado I.S.D. does not discuss the standards for constitutional review.

[14]Brief of Irving I.S.D. sets forth in full Respondent position on constitutional interpretation.

a review of legal precedent already extant in the jurisprudence of this State. In many cases this review will omit many state cases that have been discussed in the briefing before the Court of Appeals in the interest of brevity. The State's briefs below are included in a separate Appendix to this Brief.

II. Judicial Review of School District Lines

Having analyzed the specific components of the school finance "system" individually, it becomes clear that this writ of error is predicated upon only one of the three main components of the system, the creation of local school districts and their ability to levy ad valorem property taxes. As previously noted, the Petitioners have not challenged in this Application for Writ of Error any constitutional provision or statute by which districts were created or authorized to tax. The original system, created by the Constitution, is itself unassailable. The general revenue component of the system significantly ameliorates the impact of disparate wealth among the several districts and promotes the very goals Petitioners seek to vindicate by this suit. It could, therefore, withstand even the strict scrutiny analysis Petitioners advocate. The problem lies solely in the fact that the 1,058 school districts in this state encompass highly divergent wealth and have differing

abilities to raise and spend money in excess of the state foundation school program.

Petitioners argue that, at least in the area of school finance, the state's reliance upon local governmental unit resources is unconstitutional. They arrive at this conclusion, however, without considering the substantial body of case law dealing with the justiciability of legislative and local decisions regarding political boundaries, both in general, and in the specific context of school finance.

Article II, Section I of the Texas Constitution provides:

> The powers of the Government of the State of Texas shall be divided into three distinct departments, each of which shall be confided to a separate body of magistracy, to wit: Those which are Legislative to one, those which are Executive to another, and those which are judicial to another; and no person, or collection of persons, being of one of these departments, shall exercise any power properly attached to either of the other, except in instances herein expressly permitted.

An early case dealing with the legislative creation of geographically limited entities dealt with the creation of a second District Court in Bexar County, Texas. In that case, the Texas Supreme Court was called upon to construe the implied constitutional powers of the Legislature. In

looking at the legislative powers, Chief Justice Stayton wrote:

> "It has frequently been said that an act of the legislature must be held valid unless some superior law, in express terms or by necessary implication, forbade its passage. A prohibition of the exercise of the power cannot be said to be necessarily implied unless, looking to the language and purpose of the Constitution, it is evident that without such implication, the will of the people as illustrated by careful consideration of all its provisions cannot be given effect.

Lytle v. Halff, 75 Tex 128, 12 S.W. 610, 611 (Tex. 1889)

The court further held that any limitation of the power of the Legislature must clearly evidence the intention of the people to so deny and that

> "all legislation power, except insofar as this power is restricted by constitutional limitations, rests with the department of government to which the law-making power is confided."

Id. at 613.

Similar to the provision of Article V §14, the Legislature was given the power to create school districts by amendment to the Constitution in 1883.

> "...the Legislature may also provide for the formation of school districts within all or any of the counties of this State, by general or special law, without the local notice required in other cases of special legislation..."

As in the case of Lytle, supra, there is no constitutional limitation upon the Legislature's power in this regard. State v. Brownson, 94 Tex. 436, 61 S.W. 114 (Tex. 1901). It should be noted that this power to create school districts by general or special law survived amendment to Article VII § 3 in 1908, 1918, and 1920.[15] On November 20, 1926, the citizens of the State changed this power by eliminating the provisions for formation of districts by special law and permitted their formation by general laws only. Proclamation January 20, 1927 see V.A.T. Constitution, Vol. 2 historical note to Article VII §3, p. 386. This change and its implications are significant. After 1927, the Legislature was constrained in its ability to tamper with local school districts by the specific limitations contained in Article 3 §56 of the Texas Constitution.

It is clear that the power to create school districts is one that was specifically delegated to the Legislature by the Texas Constitution and "... invests the Legislature with plenary power with reference to the creation of school

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[15]See Appendix to this Brief for history of amendments to Art. VII §3.

districts." Terrell v. Clifton Independent School District, 5 S.W.2d 808, 810 (Tex. App.- Waco 1928 writ ref'd);

> "The present constitution as originally adopted, with but few exceptions gave the Legislature unlimited power over the management and distribution of the free-school fund...
> and
> ... the purpose of the provision quoted [the authority in Art. VII §3 (1883) to create school districts] was to give the legislature a free hand in establishing independent school districts. Being the expression of the will of the people, any provisions of the Constitution previously existing must, if in conflict, yield to it."

State v. Brownson 94 Tex. 436, 437, 61 S.W. 114 (Tex. 1901) See, McPhail v. Tax Collector of Van Zandt County, 280 S.W. 260, 263 (Tex.App. -- Dallas 1925, writ ref'd)

A specially delegated power may be lodged wherever the people determine by the Constitution, but once conferred, it may not be exercised by another branch of government Underwood v. State, 12 S.W. 2d 206 (Tex.Cr.App. 1927); Ex parte Miers, 64 S.W.2d 778 (Tex.Cr.App. 1933). Further, a power which has been granted to one department of government may be exercised only by that branch, to the exclusion of others. Snodgrass v. State, 150 S.W. 162 (Tex.Cr.App. 1912). Any attempt by one department to interfere with the powers specifically delegated to another department is null and void. Ex parte Rice, 162 S.W. 891 (Tex.Cr.App. 1914);

Ex parte Giles, 502 S.W. 2d 774 (Tex.Cr.App. 1973); March v. State, 44 Tex. 64 (Tex. 1875). The principle that powers specifically delegated by the Constitution are exclusive was recognized by Chief Justice Marshall in Marbury v. Madison, Cranch's Reports 137 (1803). In the very case that established a significant judicial power by creating the doctrine of judicial review, Chief Justice Marshall wrote:

> "By the Constitution of the United States the President is invested with certain important political powers, in the exercise of which he is to use his own discretion, and is accountable only to his country in his political character, and to his own conscience."

In a later case dealing specifically with the justiciability of political boundaries, the United States Supreme Court, in United States v. Arredondo, 6 Pet. 691, 711, referring to its earlier holding in Foster v. Neilson, 2 Pet. 253, 307, 309, held that:

> "This Court did not deem the settlement of boundaries a judicial, but a political, question; that it was not its duty to lead, but to follow the action of the other departments of the government."

These same principles were recognized in Cherokee Nation v. Georgia, 5 Pet. 1, 21 and in Garcia v. Lee, 12 Pet. 511, 517.

Hence, the determination of the necessity for the creation of independent school districts requires the

consideration of public policy questions which are the province of the Legislature. Since 1927, that power has been delegated to local authorities by general law. Petitioners do not challenge that delegation in this suit. This is similar to the determination of "public necessity" for the issuance of a bank charter, which the Texas Supreme Court held to be an exclusively legislative, and not a judicial, matter.

> "The determination of "public necessity" by the State Banking Board involves the determination of public policy which is a matter of legislative discretion which cannot constitutionally be given to the judiciary. That would be a violation of Article II §1 of the Constitution of Texas...".

Chemical Bank & Trust Company v. Falkner 369 S.W.2d 427 (Tex. 1963).

Thus, it has long been held that the judicial department of the State of Texas may not decide political questions. Texas Industrial Traffic League v. Railroad Commission of Texas, 628 S.W.2d 187, 196 (Tex.App.--Austin 1982; rev' on other grounds, 633 S.W.2d 821; on remand 672 S.W.2d 548 (Tex.App.--Austin 1984, writ ref'd n.r.e.). As early as 1877 the Texas Supreme Court decided in Ex parte Towles, 48 Tex. 413 (1877), that not even the Legislature could delegate to the Courts the power to review political decisions by creating "appeal" rights for private citizens

in cases involving political decisions such as the location of county seats. See, Carthers v. Harnett, 67 Tex. 127, S.W.2d 523 (Tex. 1886); Harrell v. Lynch, 65 Tex. 146 (Tex. 1885).

The same applies to school districts which are political subdivisions of the State. Love v. City of Dallas, 120 Tex. 351, 40 S.W.2d 20 (Tex. 1931); Hatcher v. State, 125 Tex. 84, 81 S.W.2d 499 (Tex. 1935); Lewis v. Independent School District of City of Austin, 161 S.W.2d 450 (Tex. 1942).

The political question doctrine which acts to restrict judicial review, also applies to boundaries of political subdivisions.

> "The determination of the boundaries of a political subdivision of the State is a "political question" solely within the power prerogative and discretion of the Legislature and not subject to judicial review."

State ex rel Grimes County Taxpayers Association v. Texas Municipal Power Agency, 565 S.W.2d 258, 274 (Tex.App.--Houston [1st Dist.] 1978, no writ); Carter v. Hamlin Hospital District, 538 S.W.2d 671 (Tex.Civ.App.--Eastland 1976, writ ref'd n.r.e.); Jimenez v. Hidalgo County Water Improvement No. 2, 68 F.R.D 668 (S.D. Tex. 1975), aff'd, 424 U.S. 950, 965 S.Ct. 1423, (1976). This is not a new constitutional doctrine:

> "What properly shall be embraced within a municipal corporation or taxing district and whether it shall be taxed for municipal purposes, are political questions, to be determined by the lawmaking power, and an attempt by the judiciary to revise the legislative action would be usurpation."

Kettle v. City of Dallas, 80 S.W. 874, 877 (Tex. App.--Dallas 1904, no writ); Accord, Norris v. Waco, 57 Tex. 635; City of Marshall v. Elgin, 143 S.W. 670 (Tex. App.--Texarkana 1912, no writ).

The creation of independent school districts and the fixing of their boundaries was a power given expressly to the Legislature by the constitutional amendment to Article VII §3, in 1883. While this power was removed directly from the Legislature in 1927, the Legislature was still commanded to provide a method for boundary alteration by general law. Tex. Educ. Code, Chapter 19 provides that method in a manner equally applicable to all school districts, and does not classify districts in any impermissible manner. The court's role in reviewing the local decision has properly been restricted to substantial evidence review. Central Education Agency v. Upshur County Commissioner's Court, 731 S.W.2d 559 (Tex. 1987). Therefore, the local power operates to the substantial exclusion of interference from other departments of the state government, and is not subject to the de novo or unrestricted judicial review to which it was

subjected by the trial court. While it is clear that the Petitioners dispute the wisdom of the pattern of school districts within the State of Texas, they do not demonstrate any case precedent that would authorize judicial intervention into this area.

In the present case, the trial court reached the conclusion that the boundaries of many school districts had no rational basis. The trial court reached this conclusion even though most of the districts apparently being referenced were not before the court, and even though the Petitioners did not challenge any constitutional or statutory provision by which any specific district or boundary was created, nor do they make any such challenge in their Application for Writ of Error. The trial court apparently reached this conclusion based upon the unequal property tax wealth within local school districts even though the court found no violation of Art. VIII §1 of the Constitution requiring uniform taxation.[16] Under this standard of rationality, no boundary line of any political subdivision passes muster. Are school district boundaries any less rational than county boundaries? Than city

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[16]The trial court's Art. VIII §1 finding is final, since it was not raised in the appeal below nor in this appeal by the Petitioners.

boundaries? Than water district boundaries? Than hospital district boundaries? Than municipal utility district boundaries?

The Texas Constitution does not require territorial uniformity.

> "The Equal Protection Clause relates to equality of persons as such rather than between areas, and territorial uniformity is not a constitutional prerequisite."

Carl v. South San Antonio Independent School District, 561 S.W.2d 560 (Tex. App. - Waco, 1978 writ ref'd n.r.e.) citing, McGowan v. Maryland, 366 U.S. 420, 81 S.Ct. 1101, 6 L.Ed. 2d 393 (1961). See, Lombardo v. City of Dallas, 78 S.W. 2d 475, 478 (Tex. 19934) upholding zoning ordinance, Ex Parte Hobbs, 157 S.W.2d 397 (Tex. Crim. App. 1945) upholding criminal conviction under zoning ordinance despite equal protection claim of variations from municipality to municipality. Beckendoff v. Harris-Galveston Coastal Subsidence District, 558 S.W.2d 75 (Tex. App. Houston 14th 1977, writ ref'd n.r.e., per curium 563 S.W.2d 239, 1978. Accord, Missouri v. Lewis, 101 U.S. 22 (1879); Ocampo v. United States 234 U.S. 91 (1914); Chappell Chemical Co. v. Sulphur Mines, 172 U.S. 474 (1899); Toyota v. Hawaii, 226 U.S. 184 (1912).

> This Court has never doubted the propriety of maintaining political

> subdivisions within the States and has never found in the Equal Protection Clause any per se rule of "territorial uniformity."

San Antonio Independent School District v. Rodriguez 411 U.S. 1, 53, 93 S.Ct. 1278, 1307, n. 110 (1973).

The Texas Supreme Court, in the first school finance case, discussing the variations in wealth among the school districts in the State, specifically attributed variations to "natural causes," not to any act of classification by the State. Mumme v. Marrs, 120 Tex. 383 40 S.W.2d 31 (Tex. 1931).

The Texas Supreme Court's holding in Mumme v. Marrs, supra, presaged the United State Supreme Court's ruling in the San Antonio Independent School District v. Rodriguez, 411 U.S. 1, 53, 93 S.Ct. 1278, 1307 (1973), where Justice Powell, writing for the majority found:

> Moreover, if local taxation for local expenditures were an unconstitutional method of providing for education then it might be an equally impermissible means of providing other necessary services customarily financed largely from local property taxes, including local police and fire protection, public health and hospitals, and public utility facilities of various kinds. We perceive no justification for such a severe denigration of local property taxation and control as would follow from appellees' contentions. It has simply never been within the constitutional prerogative of this Court

> to nullify statewide measures for financing public services merely because the burdens or benefits thereof fall unevenly depending upon the relative wealth of the political subdivisions in which citizens live...."

The Legislature is free to recognize degrees of need and confine its restrictions to those perceived needs. Miller v. Wilson, 236 U.S. 373, 59 L.Ed 628, 35 S.Ct. 342 (1915).

> "where rationality is the test, a State 'does not violate the Equal Protection Clause merely because the classifications created by its laws are imperfect ...'"

Massachusetts Board of Retirement v. Murgia, 427 U.S. 307, 316 (1976), quoting Dandridge v. Williams, 397 U.S. 471, 485 (1970).

A rational basis for statutory classification exists if any state of facts may be reasonably conceived to justify the scheme. Carl v. South San Antonio Independent School District, 561 S.W.2d 560, 563 (Tex. Civ. App. -- Waco 1978, writ ref'd n.r.e.) (quoting McGowan v. Maryland, 366 U.S. 420, 81 S.Ct. 1101 (19610). See also, City of Humble v. Metropolitan Transit Authority, 636 S.W.2d 484 (Tex. App. -- Austin 1982, no writ). This standard of review requires a substantial deference to the legislative process, which is proper given the legislative department's independent responsibility to interpret the Texas Constitution.

Petitioners simply ignore Texas cases that in any way indicate there is a viable doctrine of judicial restraint in this State.

Instead, Petitioners rely on legislative redistricting cases to support their unrestrained theory of judicial review of the school district lines. While it is true that the Texas Supreme Court did review legislative reapportionment in Clements v. Valles, 620 S.W.2d 112 (Tex. 1981), and Smith v. Craddick, 471 S.W.2 375 (Tex. 1971), that review was conducted pursuant to the express mandates set forth in Article III §26 of the Texas Constitution. That constitutional provision requires a preference for representation districts that do not cross county lines. It is important to note that neither of the reapportionment decisions even discussed Art.I §3 of the Texas Constitution. Petitioners' reliance on these cases is misplaced.[17] By their oblique reference to and reliance on these legislative reapportionment cases, Petitioners appear to be suggesting that all school district lines in Texas must be redrawn on a periodic basis to maintain equal taxable wealth per student.

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[17]Interestingly, a similar constitutional preference for county lines in the school district context led the Texas Supreme Court to invalidate county line districts, Parks v. West, 111 S.W.726 (Tex. 1909). This decision was effectively reversed by Constitutional Amendment in 1909.

Such a position is not suppported by Art. VII, §3 of the Constitution. Compare Art. III, §26 which requires reapportionment, and Art. III §28 which defines when reapportionment is to take place.

Subpoint 3

THE TERM "SUITABLE PROVISION" IN ART. VII. §1 DOES NOT MANDATE FINANCIAL EQUITY

I.

The Term "Suitable Provision" Does Not Mandate Equity

Both Petitioners (Brief of Alvarado I.S.D., p. 20) and the Dissent below seize upon the term "make suitable provision for...," contained in Art. VII §1, as creating some form of fiscal responsibility upon the legislature to make appropriations. This is simply to ignore the original financing scheme created by Article VII §1. The original financing scheme, described in the first part of this brief as attested by Petitioner's own historical expert, Dr. Bill Walker, contemplated dedicated general revenue appropriation. In 1883 the Constitution was amended to prohibit it. State provision for educational expenses come from revenues generated by the Perpetual School Fund, Art. VII §2 and the dedicated taxes set forth in Article VII §3. Additional dedicated taxes could be created by statute, but only for distribution under Art. VII §5. Ex Parte Cooper, 3 Tex. App. 489 (Tex. App. 1878). The distribution of all

state monies for education was prescribed by Article VII §5. Additional revenues were provided by income from the county school lands described in Article VII §6 (four leagues of land per county).[18] These were the only permissible sources of tax revenue that could be used for educational purposes Mumme v. Marrs, 40 S.W.2d 31, 34 (Tex. 1931). Their distribution was constitutionally mandated. These resources are collected and distributed to this day under the original system.

"Suitable provision" set forth in Article VII §1 neither requires nor limits general revenue appropriations since it has coexisted with amendments to Art. VII §3 that have done both.

The Mumme court held "[t]he Legislature, in obedience to the constitutional mandate, has created a public school system...," Id., at p. 33. It then went on to describe and approve the revenue sources that went into the system. Under Article VII §1, the Legislature "proceeded to establish a system of schools composed of various types...since it was necessary to establish and maintain

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[18]Chartered cities and towns were authorized to levy taxes upon approval of two-thirds of their taxpayers under Art. 11 §10. This provision was limited only to cities and towns and was not available to the more numerous common school districts.

school districts to effectuate this provision..." Wilson v. Abilene I.S.D., 190 S.W.2d 406, 411 (Tex. App. -- Eastland 1945). On the same day as Mumme, the Supreme Court held in Love v. City of Dallas, 40 S.W.2d 20, 24 (Tex. 1931)

> "The school district has been the public school system of Texas from the day of the Republic to the present time as evidenced by constitutional provisions, statutes and judicial opinion."

These constitutional provisions were construed in the earlier case of Parks v. West, 102 Tex. 11, 111 S.W. 726 (Tex. 1909) which held in construing the meaning of the 1883 amendments to Art. VII §3 that:

> While it may be true that before that amendment was adopted the Legislature had power to provide for the application of the school fund in localities as it should deem best, it does not follow that it had power to impose other school taxes, either generally or locally, than those specified in the Constitution...Hence, the power was given to make further provision than the Constitution, itself, made by forming districts and investing them with the power of taxation to the extent prescribed. The language of the amendment is pregnant with the thought that it grants a power that did not, under the Constitution, exist without it. It is to authorize "an additional tax...for the further maintenance of public free schools." Being of this character, it is a provision which authorizes the doing of the prescribed things in the way defined and not otherwise.

The import of these holdings is clear with respect to interpretation of Article VII §1. The Constitutional mandate was met by the creation of school districts throughout the state to provide education to the state's scholastics even though the system encompassed the variant wealth discussed in Mumme, Id. at 36.

In sum, both the historical record and the large body of decided Texas cases do not support Petitioners' attempt to redefine the terms "suitable provision" in Art. VII §1 of the Texas Constitution to meet what they perceive to be problems in the system.

I.

The Term "Efficient" Does Not Mandate Equity

The term "efficient" in Art. VII §1 was placed in the Constitution in furtherance of the goals of "close economy" described in the majority opinion below, at p. 12. The Brief of Irving I.S.D. describes in detail the meaning of this term. For reasons set forth therein, the term "efficient" which was originally designed to inhibit statewide expenditures may not reasonably construe to today demand greater expenditures.

REPLY POINT NUMBER FIVE
AND CROSS POINT NUMBER ONE

PETITIONERS HAVE NOT PROPERLY RAISED THEIR ART. I §19 CLAIM

Petitioners argue that the Court of Appeals erred in failing to hold that the school finance "system" violates Tex. Const. Art. I §19 for failing to provide "due course of law." Petitioners apparently believe the "system" violates "due course of law" solely because it does not allow residents of one political subdivision to "share" in the ad valorem property taxes of other, unspecified political subdivisions. In support of this unusual notion, Petitioners rely on this Court's opinion in Love v. City of Dallas, 40 S.W.2d 20 (Tex. 1931). In fact, the Love decision stands for exactly the opposite position. In response to the Petitioners' arguments, Respondents rely on their briefs before the Court of Appeals, which are submitted with this response pursuant to Rule 136(f), Texas Rules of Appellate Procedure.

As a cross point of error, Respondents note that there exists an independent ground of affirmance of the Court of Appeals' decision on Art. I §19. Footnote 2 of the majority opinion at p. 15, clearly holds that the due course of law claim was not before either the trial court or the appellate court. Petitioners in this Court do not assign this holding as error, and do not challenge the Court of Appeals' procedural ruling that Art. I §19 was never raised. Since the Court of Appeals' procedural ruling is unchallenged, nothing is presented for review by this Court.

REPLY POINT NUMBER SIX

ATTORNEYS' FEES ARE NOT RECOVERABLE

The trial court denied attorneys' fees in this case under the doctrine of sovereign immunity. The Court of Appeals did not reach the issue of fees since it held the Petitioners did not prevail in the case. Respondents agree that Petitioners did not and should not prevail in this case. If, however, Petitioners do prevail, attorneys' fees are not recoverable. Petitioners rely upon Texas State Employees Union v. Texas Department of Mental Health and Mental Retardation, 746 S.W.2d 203 (Tex. 1987) as authority that Tex. Civ. Prac. & Rem. Code §104 has waived sovereign immunity in this case. T.S.E.U. is distinguishable from the facts in this case. In T.S.E.U. the State officials had adopted a polygraph policy on their own without direction from the Legislature. In this case both State and local defendants were acting in strict compliance with legislative mandate. None of the actions complained in this suit were discretionary with the state officials. Therefore, the liability, if any, is that of the Legislature. It has not waived sovereign immunity. No attorneys' fees are due.

CONCLUSION

The Texas "system" of public school finance is not a monolith. Rather, it is a complex interaction of separate and distinct components, each with its own constitutional

and statutory origin and purpose. Many of these constitutional and statutory provisions, particularly those relating to the creation and taxing power of local school districts, have not been challenged in this lawsuit and are not before this Court.

The Court of Appeals correctly determined that the current public school finance "system" meets the requirements of the Texas Constitution. A complete review of Texas authority clearly demonstrates that the current "system" is exactly what the framers of the Constitution and the voters of this state intended it to be. This Court is bound by that intent, regardless of the socio/political arguments indicating that change may be needed. All parties agree that continued improvements are needed to address both the adequacy and equity of the "system." However, these changes cannot be brought about by judicial decree. Any fundamental change in the basic structure of public school finance must come, as it always has, by the will of the people expressed through constitutional amendment.

The Application for Writ of Error should be refused.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing instrument has been sent via U.S. Mail, certified, return receipt requested, on this the 9th day of March, 1989, to all counsel of record.

Kevin O'Hanlon / by David Thompson
KEVIN O'HANLON
Assistant Attorney General

C 8353

No. C-8353

* * * * * * * *

IN THE

SUPREME COURT OF TEXAS

* * * * * * * *

EDGEWOOD INDEPENDENT SCHOOL DISTRICT, et al.,

Petitioners

V.

WILLIAM N. KIRBY, et al.,

Respondents

* * * * * * * *

APPPENDIX TO BRIEF

* * * * * * * *

Respectfully submitted,

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ATTORNEYS FOR RESPONDENTS

NO. 3-87-190-CV

IN THE

COURT OF APPEALS

FOR THE

THIRD SUPREME JUDICIAL DISTRICT OF TEXAS

AT AUSTIN

WILLIAM N. KIRBY, et al.,
Appellants

VS.

EDGEWOOD INDEPENDENT SCHOOL DISTRICT, et al.,
Appellees

APPENDIX TO BRIEF

ORAL ARGUMENT REQUESTED

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KEY ELEMENTS OF TEXAS PUBLIC SCHOOL FINANCE--A NONTECHNICAL OUTLINE

September 1987

The following report outlines basic elements of public school finance under provisions of House Bill 72, Second Called Session, Sixty-eighth Legislature, 1984. The report has two parts. The first section provides a brief summary of the major elements on the Foundation School Program. For reference, the second section provides an outline of the topics covered and the relevant statutory citation in the Texas Education Code. Data are estimates from the Texas Education Agency.

PART I

Key Elements of Texas Public School Finance

I. Funding Sources

A. State, Local and Federal Funds

Funding for elementary and secondary education in Texas comes primarily from state and local sources. For the 1986-87 school year, the latest year for which data are available, school district official budgets showed total revenues of $11 billion. Of this total, budgeted state funds comprise an estimated 43 percent of total revenues for public education. State funds are provided from the Available School Fund and the Foundation School Fund. State support for local public schools is distributed primarily through the Foundation School Program (FSP). Budgeted local funds total an estimated 51 percent of total revenues. Property taxes for maintenance and operation and for debt service provide local support. Budgeted federal funds are an estimated 6 percent of total revenues in 1986-87.

B. Capacity for Local Support

The ability of school districts to support public schools through local taxes depends in part on taxable property values. Property values per student vary widely among Texas school districts. Based on January 1, 1985, property values, districts in the lowest 10 percent in property wealth have an average of $60,500 in property value per student. Districts in the top 10 percent have an average of $1.2 million in property value per student, or 20 times as much as the least wealthy districts. At the state average effective tax rate for maintenance and operation in 1986 of .64 cents per $100 in valuation, the least wealthy districts can raise an average of $383 per student; the wealthiest districts can raise that amount with a tax rate of .04 per $100 in valuation.

II. Foundation School Program (FSP)

A. Purpose

The purpose of the FSP is to ensure that each school district can provide students with instructional programs suitable for their educational needs. It is state policy that educational programs for similar students be substantially equal, notwithstanding local economic factors (Texas Education Code Section 16.001).

B. Cost of FSP

The cost of the FSP is to be set at a level sufficient to provide basic instructional programs for all students and to provide special programs for specific student needs. The FSP cost is the sum of the costs of the following allotments.

1. Basic Allotment and Adjustments to Basic Allotment

a. Basic Allotment

The basic allotment provides funding for the basic, or regular, educational program. The allotment is based on the number of students in average daily attendance in the regular education program. House Bill 72 provides funding for full-day kindergarten for districts offering regular kindergarten programs on a full-time basis. Districts may continue to offer regular kindergarten on a half-time basis. In the 1986-87 school year and beyond, the basic allotment is $1,350 per student. A greater amount may be provided by appropriation.

b. Adjustments to Basic Allotment

The basic allotment is adjusted as follows to meet cost factors affecting different types of districts.

(1) Price Differential Index (PDI)

The PDI adjusts the basic allotment to reflect price differences that are beyond the control of school districts. The State Board of Education adopted the same price differential index for use in 1987-88 and 1988-89 as was used in the 1985-86 and 1986-87 school years.

This index adjusts the basic allotment for factors associated with differences in teacher salaries, the largest operating expense of a district. The factors identified as beyond the control of school districts that account for salary differences are: (1) number of students in a district; (2) proportion of educationally disadvantaged students; (3) number of students per square mile; and (4) average wage level of persons working in private firms and noneducational public agencies in the county. After application of the PDI to the basic allotment, the Adjusted

Basic Allotment is higher for districts with more students, with higher proportions of educationally disadvantaged students, with more students per square mile, and in counties where private and public employers pay higher wage and salary rates. The PDI ranges from 1.0000 to 1.247.

The formula adopted by the State Board of Education for use in calculating the Adjusted Basic Allotment applies the PDI to 76 percent of the basic allotment. After application of the PDI to the basic allotment, the Adjusted Basic Allotment ranges from $1,350 (PDI = 1.0) to $1,603 (PDI = 1.246). The estimated Adjusted Basic Allotment in the 1986-87 school year for districts with varying numbers of students is as follows.

Number of Districts	Number of Students in District	Average Price Differential Index	Average Adjusted Basic Allotment	Number of Students in Average Daily Attendance in Each Category in 1986-87
6	OVER 50,000	1.2466	$1,603	529,987
14	25,000 - 49,999	1.2335	1,589	468,598
43	10,000 - 24,999	1.2146	1,570	685,728
41	5,000 - 9,999	1.1700	1,524	272,712
91	3,000 - 4,999	1.1494	1,503	356,753
114	1,600 - 2,999	1.1222	1,475	246,396
124	1,000 - 1,599	1.1027	1,455	159,438
205	500 - 999	1.0804	1,432	147,411
419	UNDER 500	1.0504	1,401	100,589

(2) Small District Adjustment

The small district adjustment provides funding to meet the costs of providing education in districts with relatively few students. The adjustment raises the Adjusted Basic Allotment for districts with fewer than 1,600 students in average daily attendance. The formula produces an Adjusted Allotment that is used in place of the Adjusted Basic Allotment for small districts. The Adjusted Allotment is higher in districts that have the smallest numbers of students as compared to the Adjusted Allotment for larger districts. The Adjusted Allotment is also higher for districts that contain more than 300 square miles. In the 1985-86 school year, the average Adjusted Allotment per student is as follows.

Number of Districts	Number of Students in District	Average Adjusted Basic Allotment	Average Adjusted Allotment	Number of Students in Average Daily in 1984-85 in Each Category
124	1,000 - 1,599	$1,455	$1,619	159,438
205	500 - 999	1,432	1,801	147,411
419	UNDER 500	1,401	1,919	100,589

(3) Sparsity Adjustment

The sparsity adjustment provides extra funding for districts that have less than 130 students and are located in sparsely populated areas. The sparsity adjustment increases the number of students for whom the district receives an Adjusted Allotment.

2. Special Allotments

a. Special Allotments for Instructional Programs

Special allotments are provided to fund educational programs for handicapped, educationally disadvantaged, bilingual, gifted and talented, and vocational education students. These allotments are computed using weights for each allotment multiplied by a count of students in each program. Vocational and special education student counts are converted to full-time equivalent students. The number of full-time equivalent students in these programs is deducted from the average daily attendance used in calculating the allotment for regular education. Use of this procedure avoids double funding of time special education and vocational education students spend in the regular educational program.

House Bill 72 directs the State Board of Education to study funding of special allotments according to instructional arrangement. Funding according to instructional arrangement takes into consideration the number of students per staff member needed to provide different types of instruction.

House Bill 1050, 70th Legislature, 1987, directed that by 1990-91 every district establish a gifted and talented program for identified students in each grade.

The following weights and counts are used in calculating the cost of each allotment under current law.

Funding for Special Allotments

Allotment	Weight	Student Count
Compensatory Education	0.2 * ABA or AA	Highest 6 months enrollment in free and reduced price lunch program for prior year.
Bilingual Education	0.1 * ABA or AA	Average daily attendance in bilingual or special language program.
Vocational Education	1.45 * ARA or AA	Full-time equivalent student in average daily attendance in vocational education program.

Special Education	Weights vary according to instructional arrangement in which student is taught.	Full-time equivalent student in average daily attendance in each instructional arrangement in the special education program. Instructional arrangements for which weights are provided include the following: resource room; self-contained, mild and moderate; self-contained, severe; and homebound. A total of 12 instructional arrangements are identified in statute.
Gifted and Talented Education	.035 * ABA or AA (1986-87) .039 * ABA or AA (1987-88) .043 * ABA or AA (1988-89)	Number of students served in approved program for gifted and talented students; not to exceed 5 percent of students in average daily attendance in districts.

b. Other Special Allotments

(1) Transportation Allotment

The Transportation Allotment is based on the number of miles of bus routes in a district and the number of students transported on each route.

(2) Education Improvement and Career Ladder Allotment

The Education Improvement and Career Ladder Allotment provides a specified allotment per student in average daily attendance. Portions of the allotment are to be used for career ladder supplements and for salaries of personnel other than classroom teachers. The remainder may be used for any legal purpose, including career ladder supplements. In 1986-87 and thereafter, the per student amount is $140. A greater amount may be set by appropriation. The specified amounts for each designated purpose are as follows.

Year	Total Allotment per ADA	Portion for Career Ladder Supplements	Portion for Other Salaries	Portion for Any Legal Purpose
1986-87	$140	$50	$45	$45
1987-88	140	70	35	35

3. Total Foundation School Program Cost

The sum of the basic and special allotments equals the cost of the FSP. The estimated cost was $6.15 billion in 1986-87, and is estimated to be $6.3 billion in 1987-88.

C. State and Local Share of FSP

1. Calculation of State Share

The state share of the FSP is determined by subtracting an amount called the "local share" from the total FSP cost. The statewide total local share is 33.3 percent of the FSP cost. The state share is 66.7 percent. The sole purpose of calculating the local share is to determine the amount of state aid. No individual district is required to raise its local share.

2. Distribution of Local Share Among School Districts

The statewide total local share is distributed among school districts according to each district's proportion of total statewide property values. A district with a greater proportion of total property values is assigned a larger proportion of the statewide local share. A district with a smaller proportion of total property values is assigned a smaller proportion of the statewide local share. The "local fund assignment" is subtracted from a district's FSP cost to determine the district's state share. The state share in less wealthy districts is a greater proportion of the district FSP cost as compared to the state share in wealthier districts. For 1986-87, the estimated state share for districts with varying property wealth is as follows.

Number of Districts	District Wealth Per Student (in Deciles)	State Share as Percentage of Total FSP Cost	Number of Students in Average Daily Attendance in 1984-85 in Each Category
106	UNDER $88,277	91.5%	362,547
106	$ 88,277 - $105,434	86.3	140,507
106	$105,435 - $122,571	83.8	209,667
106	$122,572 - $146,187	81.0	186,562
106	$146,188 - $171,595	76.6	398,627
106	$171,596 - $202,693	73.1	195,659
106	$202,694 - $253,510	66.7	416,197
106	$253,511 - $336,235	57.3	581,945
106	$336,236 - $543,881	37.9	416,301
103	OVER $543,881	13.9	59,144

III. Enrichment of Foundation School Program

A. Enrichment Equalization Program

The total Foundation School Program defined by Chapter 16 of the Texas Education Code includes an enrichment equalization program. This consists of an add-on of 30 percent of the cost of the allotments used to calculate the local share of the Foundation School Program, adjusted for tax effort. Therefore, every district, irrespective of property wealth, participates in the enrichment equalization program. The total program was an estimated $1.78 billion in 1986-87, and is estimated to increase to $1.87 billion in 1987-88. The program is financed with

- both state and local shares. The state share was an estimated $492 million in 1986-87, and is an estimated $522 million in 1987-88. The state portion of the program is distributed to districts with less than 110 percent of the state average property value per student. The poorer the district the greater the state portion of the calculated program amount. No state money is distributed to districts whose property value per student is at or above 110 percent of the state average; the enrichment equalization program is financed totally from local funds. As noted above, each district's program amount can be reduced if the district's effective tax effort does not meet the level defined in statute.

B. Local Property Taxes for Maintenance and Operation

School districts use maintenance tax revenues to supplement the basic instructional program provided through the Foundation School Program. Districts are not required to raise the local shares of the Foundation School Program cost, enrichment equalization aid, or two other programs (experienced teacher allotment and prekindergarten) with similar state and local shared costs. However, these local shares represented an estimated 76 percent of the $4.2 billion in maintenance levies reported in 1986-87. This left an estimated $1 billion in local monies available to supplement the FSP. Wealthier districts have greater ability to supplement the FSP than do less wealthy districts.

IV. Equalization Provisions of FSP

House Bill 72 directs proportionately more state aid to districts with less property value per student. Most of the equalization provided by H.B. 72 results from two provisions: increased FSP cost with an increased local share; and increased aid through the enrichment equalization allotment. The increase in local share accounts for most of the equalization achieved to date.

V. FSP State Aid

State aid under the FSP equals the total of the state share, enrichment equalization, and experienced teacher allotment. State aid was an estimated $4.8 billion in 1986-87 and is an estimated $4.8 billion in 1987-88.

VI. Proration

House Bill 72 provided that state aid would be reduced on a per student basis if the amount generated by formula exceeded the amount appropriated for the Foundation School Program, including enrichment equalization allotment. Under provisions of Texas Education Code 16.254(d), each district's state aid would be prorated by the same amount per student. The per student amount would be determined by dividing the amount exceeding the appropriation by the total number of students in average daily attendance in the state.

The General Appropriations Act passed by the 70th Legislature directed that payments to school districts from the Foundation School Fund be reduced by .65 percent. This would result in an estimated decrease of approximately

$27 million in the 1987-88 school year. The actual amount to be prorated will not be known until fall and spring student attendance counts are available.

The 70th Legislature, Second Called Session, also enacted a new measure to prorate state aid during the 1987-88 and 1988-89 school years only. Instead of per student proration, House Bill 177 mandates the State Board to adopt a formula for proration that considers district taxable property value per student, effective tax rate, delinquent taxes as a percent of total tax levy, and other factors that the State Board considers appropriate. The State Board will consider a proration formula in the fall of 1987 for use in 1987-88 and 1988-89. For the 1989-90 school year and thereafter, any proration required would be implemented on a per ADA basis as specified in TEC 16.254(d).

House Bill 177 authorizes school districts to increase the rollback tax rate in 1988-89 and 1989-90 school years to offset proration of state aid. The Commissioner of Education is to certify the amount prorated each year. For the 1988-89 school year, the rollback tax rate is increased by the rate that would impose the certified prorated amount for the 1987-88 school year. For the 1989-90 school year, the calculation of the maintenance and operations effective tax rate is adjusted by deducting from the last year's levy the amount of taxes imposed in 1988-89 to offset proration. The rollback rate for the 1989 tax year is then increased by the amount prorated in 1988-89.

VII. Compensation for Personnel Under FSP

A. Salary Schedule for Professional Personnel

House Bill 72 provides a minimum salary schedule for all professional personnel. Beginning personnel are to be paid at least $1,520 per month. Personnel are placed on the schedule based on years of experience. The schedule has an entry level and 10 steps, with employees advancing one step for each year of experience. Each step represents an increment of $114 per month in the minimum salary. As under previous law, the Legislature has not required school districts to supplement salaries. Salaries for teacher aides and educational secretaries are set by local school boards in accordance with local market conditions.

B. Funding for Career Ladder

House Bill 72 provides a career ladder for teachers. Placement on the career ladder is based on education, years of experience, and job performance. Teachers meeting specified performance standards are eligible to receive salary supplements as follows. Actual placement on levels II or above is decided by each district based on the state appraisal system.

Career Ladder Supplements

Career Ladder Level	Amount of Supplement	School Year in Which First Implemented
I	$ -0-	1984-85
II	1,500 - 2,000	1984-85
III	3,000 - 4,000	1987-88
IV	4,500 - 6,000	1989-90

Funding for the supplements is provided through a portion of the Education Improvement and Career Ladder Allotment. Under provisions of House Bill 72, districts may reduce supplements to the lower amount shown or provide for stricter performance criteria, or both, if the allotment for career ladder purposes does not fully fund the higher supplement amounts. State Board of Education rules specify the stricter performance criteria that may be applied. Additional local funds may be used for career ladder supplements only if all funds available for any legal purpose under the Education Improvement Career Ladder Allotment have been used for career ladder supplements. Districts must also demonstrate intent to use career ladder supplements to identify and to reward excellence in teacher performance as opposed to a salary supplement for all teachers meeting the minimum requirements for placement on the career ladder.

C. Special Allotments for Salaries

1. The Education Improvement and Career Ladder Allotment provides funds that must be used for salaries of personnel other than classroom teachers.

2. The Experienced Teacher Allotment is designed to assist districts in attracting and retaining experienced teachers. School districts employing teachers with above average years of experience participate in this program and receive extra state funds under this allotment.

VIII. Categorical Programs

Certain categorical programs also receive funding under the General Appropriations Act line item for Foundation School Program Allocations to Local Schools. House Bill 72 added the following categorical programs for certain four- and five-year-old students.

A. Prekindergarten

Prekindergarten programs are required for educationally disadvantaged students. Students are eligible for prekindergarten if they are at least four years old and are either unable to speak and to comprehend English or are from families with income below subsistence levels. Districts must offer prekindergarten programs if the district identifies 15 or more eligible students. Prekindergarten classes are to be

operated on a half-day basis. A district may be exempted from offering prekindergarten if classroom facilities must be constructed for prekindergarten. The cost of prekindergarten is shared by the state and local district in the same percentage as the district's other FSP programs. State aid for prekindergarten is an estimated $46 million in 1987-88.

B. Preschool Summer Program

Preschool summer programs are required for children with limited English proficiency. Districts required to have bilingual or special language programs are to offer preschool summer programs. Preschool programs are to be offered for one-half day for the eight weeks preceding the opening of the regular school term. State aid for preschool summer programs is an estimated $4.5 million in 1987-88. The unit cost rate for bilingual summer school programs was $3,300 for summer 1987. A unit is defined as one teacher for each 18 students.

C. Other Categorical Programs

Other categorical programs receiving funding under the line item for Foundation School Program Allocations to Public School in school year 1987-88 include the following: Statewide Programs for Visually Handicapped; Regional Day Schools for the Deaf; Regional Media Centers; Computer Services; Education Service Centers; and Incentive Aid.

PART II

Outline with Statutory Citations

I. Funding Sources - Texas Education Code (TEC), Section 16.251

- A. State, Local, and Federal Funds
- B. Capacity for Local Support

II. Foundation School Program (FSP)

- A. Purpose - TEC, Section 16.002
- B. Cost of FSP
  1. Basic Allotment and Adjustments to Basic Allotment - TEC, Sections 16.101 - 16.104
  2. Special Allotments - TEC, Sections 16.151 - 16.153; 16.155; 16.156; 16.158; 16.159
  3. Total Foundation School Program Cost - TEC, Section 16.251
- C. State and Local Share of FSP - TEC, Section 16.252
  1. Calculation of State Share
  2. Distribution of Local Share Among School Districts

III. Enrichment of FSP

- A. Local Property Taxes for Maintenance and Operation - TEC, Section 16.253
- B. Enrichment Equalization Allotment - TEC, Section 16.157

IV. Equalization Provisions of FSP - TEC, Sections 16.157, 16.252

V. FSP State Aid - TEC, Sections 16.252, 16.254, 16.157, 16.254(d)

VI. Proration - TEC, Section 16.254(d); House Bill 177, 70th Legislature, Second Called Session, 1987

VII. Compensation for Personnel Under FSP

- A. Salary Schedule for Professional Personnel - TEC, Section 16.056
- B. Funding for Career Ladder - TEC, Sections 16.057, 16.158
- C. Special Allotments for Salaries - TEC, Sections 16.154, 16.158

VIII. Categorical Programs

- A. Prekindergarten - TEC, Section 21.136
- B. Preschool Summer Program - TEC, Section 21.458
- C. Other Categorical Programs

Principles, Standards, and Procedures for Accreditation of Texas School Districts

Texas Education Agency
Austin, Texas

Authority: The provisions of this Chapter 97 issued under Acts 1969, 61st Leg., p. 2735, ch. 889, effective September 1, 1969, as amended (Texas Education Code, §§11.26(a)(5) and 16.053), unless otherwise noted.

SUBCHAPTER A. GENERAL PROVISIONS

Statutory Citation

Texas Education Code: Chapter 21. Provisions Generally Applicable to School Districts:

"Subchapter T. Accreditation"

§21.751 Accreditation Required.

"Each school district must be accredited by the Central Education Agency."

§21.752 Master.

"(a) For any district for which the State Board of Education has revoked accreditation, the commissioner of education shall appoint a master to oversee the district.

"(b) A master appointed under this section or as a step preliminary to the loss of accreditation may approve or disapprove any action of the board of trustees or the superintendent of the district.

"(c) A master serves at the will of the commissioner for a period ending with the reinstatement of the district's accreditation."

§21.753 Accreditation Standards.

"(a) The State Board of Education shall establish standards which a school district must satisfy to be accredited and shall adopt an accreditation process in accordance with this section.

"(b) The accreditation standards must include consideration of:

(1) goals and objectives of the district;

(2) compliance with statutory requirements and requirements imposed by rule of the State Board of Education under statutory authority;

(3) the quality of learning on each of the district's campuses based on indicators such as scores on achievement tests;

(4) the quality of the district's appraisal of teacher performance and of administrator performance;

(5) the effectiveness of district principals as instructional leaders;

(6) the fulfillment of curriculum requirements;

(7) the effectiveness of the district's programs in special education and for special populations;

(8) the correlation between student grades and performance on standardized tests;

(9) the quality of teacher in-service training;

(10) paperwork reduction efforts;

(11) training received by board members; and

(12) the effectiveness of the district's efforts to improve attendance."

§21.754 Investigations.

"(a) Not less than once every three years, the agency shall investigate whether a school district satisfies the accreditation standards. The agency shall investigate more frequently a district that is determined to be below any accreditation standard.

"(b) The agency shall direct investigators to be alert to any fundamental deficiencies in a district's educational system, such as failure of the district to satisfy curriculum requirements, and to report deficiencies to agency staff responsible for research and planning.

"(c) In making an accreditation investigation, the investigators shall obtain information from campus administrators, teachers, and parents of students enrolled in the district.

"(d) The agency shall give written notice to the superintendent and the board of trustees of any impending investigation of the district's accreditation."

§21.755 Investigators' Report.

"The investigators shall report verbally and in writing to the board of trustees of the district and, as appropriate, to any campus administrators, and shall make suggestions concerning any necessary improvements or sources of aid, such as educational service centers."

§21.756 Agency Assistance.

"The agency shall provide assistance to districts which have been found to have difficulty meeting accreditation standards."

§21.757 Sanctions.

"(a) If a district does not satisfy accreditation standards, the commissioner shall take the following actions, in sequence, to the extent the commissioner determines necessary:

(1) confidential notice of the deficiency to any accreditation committee of the board of trustees and to the district superintendent;

(2) public notice of the deficiency to the board of trustees;

(3) appointment of an agency monitor to participate in and report to the agency on the activities of the board of trustees; and

(4) appointment of a master to oversee the operations of the districts.

"(b) If a district fails to meet or maintain accreditation standards despite the actions of the commissioner under this section, the State Board of Education shall revoke the district's accreditation and may withhold state funds from the district."

Rules

§97.1 Purpose of Accreditation.

The purpose of state accreditation is to assure that every school district in the state maintains certain levels of quality in its operations and makes constant efforts toward improvement. In addition, accreditation provides a uniform system for the transfer of student credits between school districts and for ready recognition of the validity of high school diplomas issued by accredited districts.

§97.2 Accreditation Required.

(a) In accordance with the Texas Education Code, §21.751, each school district must be accredited by the Central Education Agency.

(b) The accreditation of a school district is based on its total program. Failure of one or more of its segments to be in substantial compliance with requirements places the status of the entire district in jeopardy.

(c) Accreditation by a voluntary association is a local district option but does not substitute for accreditation by the Central Education Agency.

§97.3 The Accreditation Monitoring Process.

(a) Each school district in the state receives an accreditation monitoring visit at least once every three years. The commissioner will establish the level of investigative effort and monitoring frequency based upon a district's history of compliance with accreditation requirements and the academic performance records of its students.

(b) The agency gives written notice to the superintendent and board of trustees of each district to be monitored before a visit is conducted.

(c) Each monitoring visit begins with an opening session during which administrators and others, as appropriate, are given information about procedures to be followed during the visit.

(d) During the course of the visit, members of the monitoring team review pertinent documents, make observations on campuses and in classrooms, and interview administrators, teachers, and parents of students enrolled in the district.

(e) At the conclusion of each visit the monitoring team orally reports its preliminary findings to administrators, representatives from the board of trustees, and others as appropriate. District representatives may, if they wish, respond to the preliminary report orally during the closing session. The district may also make written responses to the preliminary findings.

(f) The official written report is sent to the superintendent and the board of trustees. The report includes the same categories of information that were given in the visit's closing session. If corrective actions are required, deadlines for their completion are specified. If follow-up visits are required, timelines for those visits are included. The report ends with a recommendation concerning the district's accreditation status. Upon the district's receipt of the written report, the report becomes a public document, subject to the provisions of statutes dealing with open records.

§97.4 Monitors and Masters.

(a) A monitor may be appointed by the commissioner of education to advise a district's board of trustees regarding ways of addressing cited deficiencies. This is done when:

(1) the district has not taken required corrective actions after verbal and written notices of accreditation deficiencies have been received by the superintendent and board of trustees; or

(2) circumstances in the district warrant immediate and expert intervention.

(b) A master is appointed by the commissioner of education to oversee the operations of a district when the efforts of the monitor have failed to bring about the required corrective actions. The master may approve or disapprove any action of the board of trustees or the superintendent of the district.

§97.5 Types of Accreditation Status.

The types of accreditation status are as follows:

(1) Accredited. A district is classified accredited when it is in substantial compliance with accreditation requirements.

(2) Accredited, advised. A district may be classified advised when there are discrepancies between the district's program or operations and accreditation requirements. A district placed on advised status is given deadlines for correction of its deficiencies.

(3) Accredited, warned.

(A) A district may be classified warned when at least one of the following is true:

(i) there are serious discrepancies between the district's program or operations and accreditation requirements; or

(ii) the district has not corrected deficiencies for which it was placed on advised status.

(B) A district placed on warned status is given deadlines for correction of its deficiencies.

(4) Unaccredited. If a district fails to meet or maintain compliance with accreditation requirements after actions by the commissioner of education under the Texas Education Code, §21.757, the State Board of Education has a legal mandate to revoke the district's accreditation.

(5) Accredited, probationary. A new district, or a district adding grades, is placed on probationary status until the agency can conduct a full accreditation review and establish an accreditation status for the new district or the total district, including its new grade levels.

§97.6 Modification of a District's Accreditation Status.

(a) Authority to accredit school districts; to place school districts on advised, warned, or probationary status; and to appoint a monitor or a master in accordance with the Texas Education Code, Chapter 21, Subchapter T, rests with the commissioner of education.

Authority to place a school district on unaccredited status and to withhold state funds from the district rests with the State Board of Education. Once either of these sanctions has been imposed, only the State Board of Education has authority to restore accredited status and permit state funds to flow to the district.

(c) Decisions of the commissioner of education may be appealed in accordance with the provisions of Chapter 157 of this title (relating to Hearings and Appeals). Decisions of the State Board of Education may be appealed in accordance with the Texas Education Code, §11.13(c).

§97.7 Non-Public Schools.

The commissioner of education shall be authorized to review the standards of other accrediting bodies which accredit non-public schools in Texas. Where the commissioner determines that such standards are comparable to the standards in this chapter, the commissioner may recognize the accrediting association. The commissioner of education shall disseminate information on schools accredited by associations recognized by the commissioner. Student credits earned in non-public schools accredited by a recognized association shall be transferable to Texas public schools, and teacher service in accredited non-public schools shall be creditable in accordance with Chapter 121, Subchapter C, of this title (relating to Years of Service for Salary Increment Purposes).

Source: The provisions of this Subchapter A adopted January 1986 to be effective February 12, 1986, 11 TexReg 545.

SUBCHAPTER B. PRINCIPLES AND STANDARDS FOR ACCREDITATION

§97.21 Principle I.

Principle. Community conditions permit and encourage the district to maintain an educational program of high quality.

(1) Standard 1. School district personnel, the board of trustees, and the community work harmoniously toward promoting and producing positive student learning outcomes.

(2) Standard 2. The administration and board of trustees maintain communication with citizens and parents concerning school operations and student achievement.

(A) Indicator A. Citizens are systematically kept informed of school-related events and issues, at district, campus, and classroom levels.

(B) Indicator B. Citizens are systematically allowed and encouraged to use appropriate channels and forums to make their views known.

(C) Indicator C. The rights of parents and the importance of parental involvement in the educational process are recognized by the administration and board of trustees in their policies and their actions.

(3) Standard 3. The district's tax rate is adequate to finance required programs and operations.

(A) Indicator A. Funding is adequate to allow the instructional program to be in compliance with accreditation requirements.

(B) Indicator B. The conditions of the physical facilities reflect sufficient financial support by the district's citizens.

§97.22 Principle II.

Principle. The district operates in compliance with constitutional and statutory law, rules of the State Board of Education, and other applicable state and federal laws and regulations.

(1) Standard 1. The superintendent of schools keeps the board of trustees informed of applicable laws, rules, and regulations that affect school operations.

(2) Standard 2. The board of trustees obtains reliable interpretations of applicable laws, rules, and regulations, and acts in accordance with those interpretations.

§97.23 Principle III.

Principle. District governance produces educational effectiveness, systematic accountability, and fiscal responsibility.

(1) Standard 1. The board of trustees functions as the district's policy-making and appraisal body.

(A) Indicator A. The board develops, adopts, and follows legal policies and budgets that support an effective educational program.

(B) Indicator B. The board appraises district programs for their effectiveness in bringing about student learning.

(C) Indicator C. The board recognizes and respects the superintendent's rights and responsibilities as the chief administrative officer of the district. The board ensures that the superintendent has sufficient authority to function effectively in that role, makes its expectations clear in the superintendent's written job description, and regularly evaluates the superintendent's performance in terms of those expectations.

(D) Indicator D. The individual members of the board participate in mandated training programs designed to increase their knowledge and effectiveness.

(2) Standard 2. The superintendent of schools functions as the chief administrative officer of the district.

(A) Indicator A. The superintendent adheres to all legal policies and budgets adopted by the board.

(B) Indicator B. The superintendent recognizes and respects the board's rights and responsibilities as the district's policy-making and appraisal body.

(C) Indicator C. The superintendent ensures that each principal functions as the campus instructional leader.

(D) Indicator D. The superintendent participates in activities and training programs designed to increase administrative knowledge and effectiveness.

(3) Standard 3. The board of trustees holds regularly scheduled meetings, and keeps official minutes of the meetings.

(A) Indicator A. Both open and closed meetings of the board comply with legal requirements.

(B) Indicator B. The minutes record all of the board's official actions, comply with state law, and are available to the public

(4) Standard 4. The district's policies are in writing and have been officially adopted by the board. They are given appropriate distribution, and are accessible to school staff members, citizens, and all interested individuals.

(A) Indicator A. Policies are comprehensive. Especially important are those related to:

(i) students - attendance, responsibilities, transfers, curriculum offerings and graduation requirements, promotion and retention, remediation and placement, participation in extracurricular activities, rights, conditions leading to suspension or other disciplinary sanctions, and procedural safeguards required by law;

(ii) school operations - paperwork reduction efforts and the district's efforts to improve attendance;

(iii) employees - responsibilities, job descriptions, rights under employment status, appraisal and evaluation, retention and dismissal, contracts and assignments, and procedural safeguards required by law; and

(iv) health and safety - policies dealing with student health required by law, accident and fire prevention, procedures in case of accidents and disasters, and safety precautions.

(B) Indicator B. Each policy bears the date of its adoption or most recent amendment.

(C) Indicator C. Policies are updated at least annually, and completely reviewed every three years.

97.24 Principle IV.

Principle. The district is continuously improving the effectiveness of its programs and services.

(1) Standard 1. The board of trustees and the district staff are accountable for the effectiveness of the district's programs and services.

(A) Indicator A. The district uses the annual performance report and other evaluation information to identify and report to the public both the programs and services that need improvement and those with high quality which should be maintained.

(B) Indicator B. The evaluation of district performance includes, but is not limited to:

(i) the quality of learning on each campus;

(ii) effectiveness of special education and programs for special populations;

(iii) correlation between student grades and performance on standardized tests;

(iv) effectiveness of strategies to improve student attendance in a district or on a campus where student attendance constitutes a problem; and

(v) the quality of teacher, administrator, and board member training programs.

(2) Standard 2. The district uses effective strategies for improvement of its programs and services.

(A) Indicator A. School district goals, objectives, and strategies for improvement are specific and are based upon the findings of the annual performance report and on other evaluations of programs and services.

(B) Indicator B. Goals, objectives, and strategies for improvement are formulated with participation by teachers, principals, and others who have responsibility for their implementation. They are communicated to all district staff members, to the students and their parents, and to the residents of the district.

(C) Indicator C. The district uses a planning process that helps it to carry out identified strategies for improving the quality and effectiveness of district and campus programs and services.

§97.25 Principle V.

Principle. The district's instructional program complies with all statutory requirements and rules of the State Board of Education.

(1) Standard 1. The district is in compliance with Chapter 75 of this title (relating to Curriculum).

(2) Standard 2. Local curriculum documents and materials are developed and used solely for their effectiveness in the teaching/learning process.

(3) Standard 3. The district's curriculum is adapted appropriately to meet the needs of all students, including those in special education and special populations.